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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 15th December 1953

S.R.O. 2371.—Whereas the elections of Shri Lal Dan Bahadur Singh and Shri Ram Prasad Singh, as members of the Legislative Assembly of the State of **Vindhya Pradesh, from the Pushprajgarh** constituency of that Assembly, have been called in question by an Election Petition duly presented under Part VI of of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mulai s/o Shri Samaru, r/o Khorari Patwari Halqa Venkatnagar, District Shahdol and Shri Lalta, s/o Shri Baira r/o Sulkhari, Patwari Halqa Venkatnagar, District Shahdol;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, V.P., AT REWA

ELECTION PETITION No. 15/307 OF 1952

1. Shri Mulai, Son of Samaru, r/o Khorari, Patwari halka Venkatnagar, District Shahdol;
2. Shri Lalta, Son of Baira, r/o Sulkhari, Patwari halka Venkatnagar, District Shahdol.—*Petitioners.*

Versus

1. Lal Dan Bahadur Singh, resident of Khairaha, District Shahdol (Congress);
2. Shri Ram Prasad Singh, s/o Gajrap Singh, r/o Girari, District Shahdol (Scheduled Tribe);
3. Ramgopal, r/o Keotar, District Shahdol (Socialist);
4. Shri Sukh Sen, r/o District Shahdol (Scheduled Tribe);
5. Shri Ganga Singh, s/o Lal Ranbir Singh, r/o Lahsuna, District Shahdol;
6. Shri Dalbir Singh, s/o Angad Singh, r/o Kotma, District Shahdol;
7. Shri Thakur Badei Narain Singh, s/o Th. Baldeo Singh, District Shahdol—*Respondents.*

CORAM:—

1. Shri E. A. N. Mukarji, M.A., LL.B.—*Chairman.*
2. Shri U. S. Prasad, B.A., B.L.—*Member.*
3. Shri J. K. Kapoor, B.A., LL.B.—*Member.*

ORDER

Petitioners of this case, Shri Mulai and Shri Lalta have their names registered in the electoral roll of Pushprajgarh constituency, which is a double-member constituency for seats in V.P. Legislative Assembly one reserved for the Scheduled Tribes and the other a general seat. It may be mentioned here that Vindhya Pradesh is a Part 'C' State formed of several states which merged with Indian Union some time in April 1948.

2. Petitioners also filed their nomination papers for the reserved seat in V.P. Legislative Assembly from Pushprajgarh constituency, but their nomination papers were rejected. Respondents Nos. 6 and 7 were validly nominated candidates but they later withdrew their candidature. So respondent No. 1 to No. 5 only contested the two seats in the V.P. Legislative Assembly from Pushprajgarh constituency. As a result of counting of votes, respdt. Nos. 1 and 2 were declared elected, respdt. No. 1 for the general seat and respondent No. 2 for the reserved one. The total number of votes secured by each of the 5 contesting candidates, as noted in form No.16, were as follows:—

1. Respondent No. 1 (Congress)	..	8,849
2. Respondent No. 2 (Scheduled Tribes)	..	5,645
3. Respondent No. 3 (Socialist)	..	3,180
4. Respondent No. 4 (Scheduled Tribes)	..	1,496
5. Respondent No. 5 (K.M.P.P.)	..	5,028

3. The election of respondent Nos. 1 and 2 to the V.P. Legislative Assembly from Pushprajgarh constituency has been challenged by the petitioners on various grounds mentioned in para. 6 of the petition. In the first place the design of the ballot boxes approved by the Election Commission for use in the last general election has been characterised as defective and contrary to the mandatory provisions of law, in as much as, by reason of inherent defect in its design, the boxes could be easily unlocked without breaking their seals. It is further alleged that the said ballot boxes were not properly sealed and no adequate arrangements for their transport and safe custody were made. The petitioners believe that these ballot boxes were actually tampered with after the polls and before the counting of their contents.

4. According to the petitioners the Presiding Officers did not put the unused ballot papers and marked electoral rolls in sealed packets, nor prepared returns in form No. 10 in presence of respondent No. 5 or his agent. At several polling stations, polling hours are said to have been curtailed by 30 minutes with the result that many of the voters had to go away without casting their votes. At polling station Naugawan the polling agent of respondent No. 5 is said to have been turned out by the Presiding Officer and at 5 other polling stations of Dhurwasan and others, the Presiding Officer directed the voters to cast their votes without touching the ballot boxes. Consequently 1,700, out of 2,900 ballot papers were left outside the ballot boxes.

5. The counting of ballot papers commenced at Shahdol on the 29th January 1952 and was postponed at about 9-30 p.m. to the next day. The petitioners aver that the ballot boxes of one candidate were not brought together nor were they arranged candidatewise. Since a number of the ballot boxes had lost their outer symbols, 23 such were brought and their window covers shifted in order to find out the 5 missing ballot boxes of respondent No. 5. These 5 boxes, were found out and the contents thereof were counted on the 29th January. But the remaining 18 ballot boxes whose window covers had been shifted, were left unsealed that night despite the objection of respondent No. 5 The ballot papers of other 4 candidates were counted the next day. The Returning Officer did not verify the accounts of ballot papers which had been submitted by the Presiding Officers with those actually counted by him, nor did he prepare returns in forms No. 14 and 16 in presence of respondent No. 5 or his agent. The latter were not allowed to take copies of the extract of the returns, if any, made by the Returning Officer. The petitioners further aver that ballot papers in lumps were found in the ballot boxes of respondent No. 1 which indicated surreptitious introduction of those ballot papers after the polling. Those engaged in the counting of the ballot papers are said to have been entertained with food and drink and undue influence is said to have been exercised upon the Returning Officer. Members of the Congress organisation and several Government officials engaged in election work, according to the petitioners, canvassed for respondents No. 1 and 2. Correctness of the returns of the election expenses submitted by respondent Nos. 1 and 2 also has been challenged by the petitioners.

6. Lastly it has been contended by the petitioners that their nomination papers were improperly rejected and that of respondent No. 1 wrongly accepted in as much as respondent No. 2 is a Kshatriya and not a member of the Scheduled Tribes.

7. Respondent No. 5, in his written statement, supported all the allegations contained in the petition. The contesting respondent Nos. 1 and 2 have categorically denied and strongly refuted the petitioners' averments contained in the 29 sub-paras. of para. 6 of the petition and affirmed that they have been duly and validly elected. They further maintain that the election is not vitiated by any irregularity, illegality or non-compliance with the Rules and provisions of the Law. They deny to have practised any corrupt or illegal practice, major or minor, in course of their election campaign. As contended by these respondents, neither the Presiding Officer nor the Returning Officer violated any of the election rules nor did any Government official or member of the Congress organisation directly or indirectly help or canvass for these respondents. Respondent No. 2 affirms to be a Gond and as such claims to be a member of the Scheduled Tribes and hence he says that his nomination paper was properly accepted. The respondents questioned the maintainability of the petition on the ground of non-joinder of some of the withdrawn candidates, defective verification and prayer for two reliefs. The above pleas have given rise to the following issues:—

Issue no. I(a).—Were Shri Pooran Chand and Shri Polwa necessary parties to this petition?

Issue no. II(1).—Were the nomination papers of the petitioners improperly rejected?

(2) If so, has the result of the election been materially affected thereby?

Issue no. III(1).—Was the nomination paper of Ram Prasad Sinah (respondent No. 2) improperly accepted?

(2) If so, has the result of the election been materially affected thereby?

Issue no. IV (1).—Have the petition and list of particulars not been properly verified?

(2) If so, what is the effect?

Issue no. V(1)—Were the ballot boxes used in this election defective and contrary to the mandatory provisions of law, in as much as they could be unlocked and ballot papers could be taken out therefrom without their seals being broken?

(2) Have there been infringements of the provisions of the R. P. Act and Rules, made thereunder, as alleged in sub paras. 2, 3, 4, 5, 6, 7, 8, 12, 13, 14, 21, 22, 23, 24 and 25 of para. 6 of the petition?

(3) Were no adequate arrangements made for the safe transport of the ballot boxes and papers after polling and for their safe custody till the time of counting with the result that such were easily approachable by people with ample opportunities to tamper with them?

(4) Were all the above contraventions of laws made so that ballot papers might be manipulated into the boxes to the advantage of respondents Nos. 1 and 2.

(5) Were such ballot boxes tampered with, by the connivance of respondents 1 and 2 and their agents, and supporters, and were fresh and unused ballot papers introduced into the boxes of respondent 1 and 2?

(6) If so, what is the effect?

Issue No. VI(1).—Did members of the Congress Organisation and officials of the V.P. Government, who took part in the conduct of the elections, indulge in malpractices of undue influence and coercion, with a view to secure the defeat of the K.M.P. Party and success of the Congress candidates?

(2) Was this done with the connivance of respondents 1 and 2?

(3) If so, what is the effect?

Issue No. VII(1).—Are the returns of election expenses filed by respondents 1 and 2 not correct and not in accordance with the requirements of law?

(2) If so, what is the result?

Issue No. VIII.—Are petitioners entitled to any relief?

FINDINGS

8. *Issue No.* 1.—This issue has already been decided by our order dated 26th November 1952. We have found that Shri Pooran Chand and Shri Polwa were not necessary parties to this petition.

9. *Isue No. II*(1).—The nomination paper as well as the previous declaration of being members of Scheduled Tribes which were filed by Petitioner No. 1 (Shri Mulai) and Petitioner No. 2 (Shri Lalta) have been produced before us. The declaration filed by Shri Mulai (P.W. 14/1), his nomination paper (P.W. 14/2) and similarly the declaration filed by Shri Lalta, petitioner No. 2 (Ex. P.W. 13/1) and his nomination paper (Ex. P.W. 13/2) are on the record. Both these nomination papers were rejected by the Returning Officer at the time of scrutiny on 8th December 1951 on the ground that the signatures of the respective proposer and seconder on each of these nomination papers had not been attested as required by the Election Rules. We may note in this connection that Samaru and Kedha put their respective thumb marks as proposer and seconder of Shri Mulai over the latter's nomination paper (P.W. 14/2), but none of these thumb marks appear to have been attested by any of the officers contemplated by Rules 2(2) of the Representation of the Peoples (Conduct of Election and Election Petition) Rules 1951. The said rule may be profitably quoted here:—

"For the purpose of the Act or these Rules, a person who is unable to write his name, shall unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the Presiding Officer or such other officer as may be specified in this behalf by the Election Commission, and such officer, on being satisfied, as to his identity, has attested the mark as being the mark of such person." The learned counsel for the petitioners has attempted to draw a distinction between the two expression "signed" and "subscribed". Under Section 33(1) of the R. P. Act, 1951 a nomination paper in the prescribed from subscribed by the candidate himself as assenting to the nomination paper and by two persons referred to in sub-para. 2 as proposer and seconder, is complete by itself. Hence the learned Advocate for the petitioner has contended that, although attestation of a thumb mark put by an illiterate person in lieu of his signature has to be attested under Rule 2(2) of the Representation of Peoples (Conduct of Elections and Election Petitions) Rules, 1951, yet, because Section 33(1) does not require the signature of proposer or seconder of a candidate over his nomination paper but only contemplates that such nomination paper be subscribed by proposer and seconder, attestation of the thumb mark in accordance with Rule 2(2) of R. P. Rules was not at all necessary. In case No. 14/304 of 1952 we have discussed this question elaborately and after considering the laws as well as the various authorities on the point we came to a finding that the term 'subscribed' includes signature in as much as the same is supported by item Nos. 12 and 16 of the prescribed form of nomination paper which provides for the signatures of proposer and seconder respectively. We further found that the signature of proposer and seconder on the nomination paper is a legal requirement of a valid nomination paper and in the case of an illiterate person, his thumb mark requires attestation within the definition of the expression 'signed' under Rule 2(2) of the R.P. Rules. (*Vide* V.P. Gazette, dated the 12th August 1953).

10. Next the petitioners have led evidence to the effect that the proposers and seconders of Shri Mulai and Lalta put their respective thumb marks on each of the two nomination papers in presence of the Returning Officer, and so there was sufficient compliance of the attestation of their thumb marks as required by Rule 2(2) of R. P. Rules P.W. 7 (Shri Ramgopal), who also stood as a candidate for a seat in V.P. Legislative Assembly from the same constituency on behalf of the Socialist party, has stated before us in examination in chief that the nomination papers of Shri Mulai and Lalta were written at Shahdol in his presence near the seat of the Returning Officer. According to P.W. 7 the proposer and seconder of Shri Mulai and Lalta put their respective thumb impressions on the nomination papers at a distance of only 5 or 6 cubits from the place where the Returning Officer was sitting. On the date of scrutiny also the proposer and seconder of Shri Mulai and Lalta were present In his cross-examination, however, the witness has given a different version about the place where the nomination papers of these two petitioners were signed and filled in. At page 3 of his cross-examination he says:—

"The nomination papers were filled in first and then taken to the Returning Officer.....Many people filled their nomination papers on the open ground which faces the Deputy Commissioner's office..... I cannot say who wrote out nomination paper of Mulai..... I cannot say who filled in nomination paper of Lalta..... Mulai's nomination paper was also filled in the same 'Maidan'

where other papers were being written out". The testimony of Petitioner No. 2 Shri Lalta who figures as P.W. 14 on this point is to the following effect:— 'Next day I filed my nomination paper before D. C. at Shahdol. It was in a tent. My nomination paper was filled in a Maidan close to the D.C's seat.....My proposer and seconder were there. They put their respective thumb marks while sitting 4 or 5 yds. from the D.C's seat. Points out to (Ex. P.W. 13/2).....My proposer and seconder were present at the scrutiny of nomination papers. Shri Baboo Lal Udania objected and pointed to the Returning Officer that the nomination papers bore the thumb marks of my proposer and seconder. I represented to the Returning Officer that my proposer and seconder were present there. The Returning Officer rejected my nomination paper saying that I need not call my proposer and seconder. In his cross-examination P.W. 14 definitely stated that when his and Shri Mulai's nomination papers were filled in, the D.C. was attending to his other work. Shri Mulai (P.W. 15) in his examination in chief stated before us that proposer and seconder thumb marked his nomination papers at a distance of 3 cubits from the D.C's seat. When questioned in cross-examination, the witness could not name the person who filled in his nomination paper or secured the thumb mark of his proposer and seconder. He further admitted that the Deputy Commissioner was writing some thing on a paper when his nomination paper was being filled in, and that the 'Jhungi' in which the R.O. was sitting at the time, could accommodate 4 or 5 persons only. Alaloo (P.W. 16) on the other hand, alleges to have put his thumb mark on the nomination paper of Lalta near the seat of the D.C in a 'Jhungi'. He too cannot name the person who took his thumb mark, and wrote Lalta's nomination papers. In his cross-examination he further added that many other persons were writing or signing their nomination papers when his thumb marks was taken. Sukhu and Samaroo (P.Ws. 17 and 18) also affirm to have put their respective thumb marks within the tent at a distance of 3 cubits from the seat of the Deputy Commissioner Samaroo, however, is unable to identify the person who took his thumb mark, nor the paper on which his thumb mark was taken. As against these R.W. 7 the seconder of respondent No. 2 swears to have been present when the nomination papers were filed. He further swears that no one accompanied Mulai and Lalta when they went to file their nomination papers before the D.C. The latter who acted as the Returning Officer has been examined before us as R.W.13. He states that before presentation all the entries in the nomination papers were completed and that he received all the nomination papers in a tent. Thus we find material discrepancies in the evidence of the aforesaid witnesses for the petitioners in regard to the place where the proposers and seconders of the two petitioners affixed their thumb marks on the nomination papers (Ex. P.W. 13/2 and P.W. 14/3). As pointed out above if the nomination papers are filled in and thumb marked outside the tent where D.C. was sitting for receiving the nomination papers or even if the D.C. was attending to his other business while the nomination papers were filled in and completed, it cannot be said that the proposer and seconders of the petitioners did affix their respective thumb marks on the two nomination papers in presence of and to the knowledge of the Returning Officer. Mere presence of the Returning Officer at the time when the petitioners' nomination papers were written and thumb marked by their respective proposer or seconder is not enough. It is his conscious presence at the time which may comply with the requirement of Rule 2(2) of R. P. Rules for the purpose of the attestation of those thumb marks by the Returning Officer. Moreover, Section 33 of R. P. Act, 1951 contemplates that nomination papers complete in all respects should be presented to the Returning Officer on the date previously notified. The nomination papers which did not comply with the rules relating to the filling in of the nomination papers and attestation of the thumb marks of illeterate proposers and seconders can not be said to have been complete and so Ex. P.W. 14/2 and P.W. 13/2 can not be held to be valid and complete before they were presented to the Returning Officer. The defect of the non-attestation of the thumb marks could not be remedied by the Returning Officer subsequently on the date of scrutiny by calling upon the proposer and seconders of the two petitioners to admit their thumb marks before him. Hence we find that the nomination papers of the two petitioners being incomplete and inherently defective at the time of their presentation by reason of the non-attestation of the proposer and seconder's thumb marks, were rightly rejected.

11. In view of our above finding the question involved in the second part of this issue does not arise.

12. *Issue No. III*—This issue has been very strenuously pressed on behalf of the petitioners and vehemently argued by their learned advocate. Obviously respondent No. 2 offered himself as a candidate for the seat reserved for a member of the Scheduled Tribes from Pushprajgarh constituency. His nomination paper has been exhibited before us as Ex. 14. In col. 6 of this nomination paper he stated himself to be a candidate for the reserved seat, as belonging to the Scheduled

Tribes called 'Gond'. His nomination paper was accepted by the Returning Officer because it fulfilled all the requirements of the law relating to the validity of a nomination paper under Section 33 of the R. P. Act, 1951. In his evidence before us respondent No. 2 Shri Ram Prasad (R.W. 5) has given his caste as Gond. He has further stated that he is Dhurwa Gond, which is one of the 36 sub-caste of the Gonds. Gonds residing in V.P. have admittedly beer notified as members of Scheduled Tribes, under the President's Order, dated (*vide* page 131 of Government of India, Ministry of Law, Manual of Election Law. Petitioners however contend that by a proclamation (Ex. P.W. 19/1) issued by H. H. the late Shri Gulab Singh, Maharaja of Rewa, and published in Rewa Raj Gazette, dated the 1st March 1941, all Gonds living within Rewa State were deemed to be Kshatriyas, and were to be called 'Raj Gonds' instead of 'Gonds' or 'Umraos' and were allowed to add 'Singh' to their names. In view of this proclamation, made by the said Maharaja of Rewa, the learned Advocate for the petitioners has urged that since the above order and proclamation of the Maharaja had the effect of law, (under Ordinance No. 4 of 1948, dated the 31st July, 1948), all Gonds inhabiting, any part of the Rewa State, thereafter ceased to be Gonds and became Raj Gonds and Kshatriyas by caste. As such Shri Ram Prasad being a Raj Gond and Kshatriya by caste under the above proclamation of the Maharaja (read with Ordinance No. 4 of 1948) was not competent to stand as a candidate for the reserved seat from Pushprajgarh constituency.

13. We propose to summarise the oral evidence of both the parties on this score before deciding the main question regarding eligibility of respondent No. 2 to be a candidate for the reserved seat. P.Ws. 1, 6, 11, 13, 14 and 15 have all stated on oath that respondent No. 2 is a Raj Gond and Kshatriya by caste.

P.W. 1. who acted as polling agent of K.M.P.P. candidate (respondent No. 5) affirms that respondent No. 2 is a Raj Gond Kshatriya. The only point of distinction between Raj Gond and Gond, according to this witness, is that a Gond takes fowls and rears pigs, while a Raj Gond behaves like a high caste Hindu. P.W. 1 is a Brahman by caste. He never attended any ceremony at the house of respondent No. 2. He admits that Raj Gond is one of the three classes of Gond.

P.W. 6 acted as Polling Agent of respondent No. 5. He goes so far as to say that all ceremonies amongst Raj Gonds are like those of Kshatriyas although in his cross-examination he could not cite a single instance where a Rajput of Vindhya Pradesh has married a Raj Gond. It is significant to note that P.W. 11 as well as 14 and 15 have in their depositions before us given their castes Gonds or some sub-caste of Gond and not as Kshatriyas, although under the Proclamation (Ex. P.W. 19/1) issued by the late Maharaja of Rewa, all Gonds within Rewa State claim to have become Raj Gonds and Kshatriyas. In the first instance P.W. 13 claimed to be a Raj Gond and said that respondent No. 2 was a Kshatriya and as such did not belong to his caste, but when questioned again and again he at last stated that respondent No. 2 belongs to the Marai sub-caste of Gonds. His evidence on this point is worthless because in his cross-examination he admits that respondent No. 2 is a perfect stranger to him. When the witness does not know respondent No. 2 at all, he cannot state his caste. The petitioner, Lalta, (P.W. 14) has stated respondent No. 2 to be a Rajput by caste and not a Gond but he does not know the sub-caste of Rajput to which Shri Ram Prasad (respondent No. 2) belongs. He simply knows that respondent No. 2 is called a Thakur and in the locality, the Pawaidar of village is also called a Thakur. Similarly the other petitioner, Shri Mulai (P.W. 15) also stated in his examination in chief that respondent No. 2 is a Thakur of Girari and a Kshatriya, but in his cross-examination he denies to have ever been to village Girari where respondent No. 2 resides and states that he has only heard that Shri Ram Prasad (respondent No. 2) is a Kshatriya. Obviously therefore his verbal testimony on the point is based on what he heard from others. He has no personal knowledge regarding the caste of respondent No. 2.

To counter-act the oral evidence of the aforesaid P.Ws., the respondent has examined 7 witnesses on this score. They are R.Ws. 1, 3 to 5, 8, 11, and 13. It is stated by R.W. 1, that Gonds who own land or Zamindari in a village are called Raj Gonds. All the sub-castes of Gonds including Raj Gonds intermarry amongst themselves and observe the same ceremonies. He can speak about Gonds because they live in village Pondi which is only 4 miles off from his village. He has cited an instance of a marriage between a Gond and a Raj Gond. It was further elicited from him in his cross-examination that Raj Gond as well as ordinary Gond worship a common Deity known as Burhadeo.

R.Ws. 3, 4 and 8 are all Gonds by caste. R.W. 5 is respondent No. 2 himself. R.W. 3 says that Gonds of any of the 36 sub-castes owning property and riches are called Raj Gonds. All the Gonds including Raj Gonds observe the same ceremonies on the occasions of deaths and marriages and worship the same diety.

R.W. 4, although a Gond by caste, has assumed the surname of 'Singh', and his nephew is married to the sister of one Raghunath Singh, a Raj Gond.

R.W. 5 (respondent No. 2) swears to be a Dhurwa Gond and States that Raj Gonds are those Gonds who own jagir and other landed property. They also worship the same Diety and observe the same ceremonies as other Gonds do. Raj Gonds marry their children in the family of Gonds and *vice versa*. Of course Raj Gonds call themselves Gond Kshatriya. In his cross-examination R.W. 5 says that people call him a Raj Gond because he is a Pawaidar.

R.W. 8 is also a Raj Gond and he maintains that there is no distinction between Raj Gonds and Gonds. He owns landed property and worships Bara Deo. He is married to the daughter of Bansu of village Dudhki who is an ordinary Gond.

The evidence of R.W. 11 on this point is of little value in as much as he merely says that Raj Gonds are also Gonds but he does not know the distinction between a Gond and a Raj Gond.

R.W. 13, was the Returning Officer who scrutinised and accepted the nomination paper of respondent No. 2. In his view Raj Gonds are Gonds and come within the Scheduled Tribes and Gonds of higher status call themselves Raj Gonds.

In the well known Treatise on the Tribes and Castes of Central Provinces of India R. V. Russell has dealt with Gond Tribe also. The following lines occurring at page 63 of his book may be profitably quoted here:—

> "Amongst the Gonds proper there are two aristocratic sub-divisions the Raj Gonds and Khatolas. According to Forsyth the Raj Gonds are in many cases the descendants of alliances between Rajput adventures and Gonds. But the term practically comprises the land holding sub-division of the Gonds, and any proprietor who was willing to pay for the privilege could probably get his family admitted into the Raj Gond group. They some times wear the sacred thread..... In some localities Raj Gonds will inter-marry with ordinary Gonds but not in others."

It may be remarked that P.W. 11 has admitted that respondent No. 2 is a Pawaidar. After a careful consideration of the evidence on record, and having regard to the views expressed by R. V. Russell, as quoted above, we have no hesitation in arriving at the conclusion that Raj Gond is only an aristocratic sub-division of Gonds, and consists of those Gonds who are rich and possess land. Such Raj Gonds being of aristocratic class may live like high caste Hindus and be treated as Kshatriyas by reason of their status and better manners. Still they would retain their original caste. It is for this reason that all the witnesses examined before us either Gond or Raj Gond have given their caste as Gonds.

15. Now the question is whether all Gonds or Raj Gonds within Rewa State became kshatriyas and ceased to be Gonds by virtue of the proclamation (Ex. P.W. 19/1) made by the then Maharaja of Rewa and published in the Rewa Raj Gazette. We may mention here that the above proclamation or 'Ghoshna' was made by the Maharaja when an address was presented to him at Pushprajgarh on the 26th January, 1941 on behalf of the Gonds. In reply to the address Maharaja Sir Gulab Singh made it clear that he had not gone there as a Ruler of Rewa State but in his personal capacity as a political or social leader. He also added that he was anxious for the uplift of the Gonds in all spheres of their life. He urged upon the Kshatriyas living in his State to adopt some of the customs of the Gonds, such as ploughing their fields themselves and widow re-marriage. The Maharaja further offered some advice to the Gonds in regard to the payment of their debts and worship of Hindu Gods. Thus we note that though head of a State he attended the big rally of the Gonds at Pushprajgarh as a social reformer and when an address was presented to him, he desired the social, economic and moral uplift of the Gonds living in his State. It was with the above object in view that he, as a social reformer, made the declaration that the Gonds should be deemed to be Kshatriyas thenceforward. The term 'Mane jawer' or its English equivalent 'regarded' or 'deemed', implies that a person or thing be taken to be what he or it is actually not. Moreover, even if the above 'Ghoshna' of the Maharaja be taken to be in the nature of an executive order and published as such in the Rewa Raj Gazette of the 1st March, 1941, it cannot, in any case, have the force of *law*, as contended by the learned Advocate of the petitioners. Ordinance No. 4 of 1948 extended application only of *Acts, Codes, Ordinances* and *other Rules* and *Regulations* published in Rewa Raj Gazette to the whole of Vindhya Pradesh. So an order of this nature given by the Maharaja does not come within any of the above categories of *Acts, Codes, Ordinances, Laws, Rules* and *Regulations*. Mere publication of this proclamation in the Rewa Raj Gazette does not give it the character of a law or rule promulgated by His Highness. In ordinary course of

business all the activities of the Maharaja as a Ruler or as a social reformer might be very well reported in the local papers or even published in Rewa Raj Gazette. So, our view is that the proclamation published in the Rewa Raj Gazette (P.W. 19/1) has no force of a law, rule or regulation, because it was not an official Act, Rule or Law promulgated by the said Maharaja Sir Gulab Singh.

16. Even if we were to suppose that all Gonds living within Rewa State were raised to the status of Kshatriyas by virtue of the above proclamation of the Maharaja, they would not cease to be members of the Scheduled Tribes. In the present case the reserved seat in the V.P. Assembly from Pushprajgarh Assembly constituency was for a member of the *"Scheduled Tribes"* and not for *"Scheduled Caste"*. 'Tribe' is something different from 'caste'. The dictionary meaning of the word 'Tribe' is an aggregate of 'stock'.....a stock being an aggregate of persons considered to be kindred..... forming a community....." while 'caste' is prevalent only amongst the Hindus. It connotes a particular section of people belonging to a particular caste or sub-caste existing in Hindu society. A number or group of people or any one of different caste may belong to a tribe but not *vice versa*. So even if the Gonds living in Rewa State in pursuance of the Maharaja's Order, could be deemed to be Kshatriyas, after March 1941, they would not cease to be members of Scheduled Tribes as specified in the second Schedule of Government of Part 'C' States Act, 1951 (at page 131 of Manual of Election Law). We may repeat here that even the petitioners while filing their nomination papers for the seat described themselves to be Gonds and their Gond witnesses also have described themselves as such. If all the Gonds inhabiting the different parts of this State became Kshatriyas or Raj Gonds, these persons must have given out their castes as Kshatriyas and not as Gonds. This also negatives the contention of the learned Advocate for the petitioners. Hence we find that the Gonds of Rewa State including their aristocratic sub-division known as Raj Gonds, still continue to be Gonds, call themselves Gonds and further that they belong to the Scheduled Tribes. Our view on this point further finds support from the provisions of the Constitution (Scheduled Caste) Part 'C' States Order, 1951. In the Scheduled Castes Order, charge of religion makes a member of a particular caste lose his caste, whereas change of religion is immaterial in case of Scheduled Tribes specified in the Schedule under this order. So from any view of this matter we are unable to hold that respondent No. 2 was not a member of the Scheduled Tribes specified as Gonds in the Schedule attached to the President's Order, at the time when he filed his nomination paper, and as such not eligible to be a candidate for the said reserved seat from Pushprajgarh constituency. Consequently we find that the nomination paper of respondent No. 2 was rightly accepted by the Returning Officer.

17. *Issue No. IV*(1) &(2).—There was some defect in verification of a particular statement made in the petition and the particulars enclosed thereto. By our order dated 15th January, 1953, we called upon the petitioners to amend such defects in the verification and the amendment has since been made. So the petition and the particulars now stand properly verified.

18. *Issue No. V*(1).—As stated above in sub-para. (1) of para. 6 of the petition, the petitioners have pointed out the inherent defect in the design of the ballot boxes selected for use by the Election Commission and urged that since the ballot boxes could be opened without damaging the seals affixed thereto, the Election Commission did not strictly conform to the provisions of Rule 21 of the R.P. Rules, 1951. Shri Jang Bahadur Singh a practising lawyer of Chhatarpur has appeared as P.W. 10. He demonstrated before us the opening of a ballot box of the type of Ex. P3 (in case No. 14/304) by pressing the knob on the upper lid, after shifting the knots over the thread upto the lac seal which had been put at a distance of ¾" from the knob, and after turning the window cover clockwise. Neither the paper seal nor the lac seal were damaged. He did it in 4 minutes. P.W. 10 had previously pasted the paper seal tightly.

P.W. 19 *Shri Jai Singh* adopted another method of opening the same type of ballot box with the help of a needle 3½" long and a crochet needle 5½" long. He first pulled out the wire which was twisted on the knob, next he loosened the knot over the thread and shifted the same to the lac seal. Then he turned the window cover, pushed the paper seal aside and pulled out the string which operated the bolt. Thereafter he turned the window cover and without breaking the paper seal opened the ballot box.

So in view of these demonstrations we find that the ballot boxes used at the last general elections could be opened with force or dexterity. We have dealt, at length, with this question of the nature and design of the ballot boxes in Election Petition No. 3/141 of 1952 (Shri Keshau Prasad *versus* Shri Brijraj Singh) decided on 20th May 1953. We have held therein that the design of the ballot

boxes selected and approved of by the Election Commission for use at the last general election substantially complied with the requirements of Rule 21 of R.P. Rules, 1951. Of course these boxes have not proved equal to the superior mechanical cunning and force against which an inner fastening can seldom be proof. As in case No. 3/141, so also in other cases already decided by us, we have found, however, that the ballot boxes of the design of P3, as approved of by Election Commission, are not contrary to the mandatory provisions of law (*Vide Gazette of India dated 30th June* 1953). We may further note here that the contents of such ballot boxes could not be removed therefrom nor fresh ballot papers could be introduced therein without breaking their seals, had the lac seals been affixed very close or adjacent to the knob.

19. *Issue No. V(2): Sub-para.* 2.—As regards petitioners' contention about the improper sealing of the ballot boxes after the close of the polls, P.Ws. 1, 2, 4, 6 and 8 have stated that the paper seals were pasted by the Presiding Officers loosely and that the lac seal over the thread used to be put at the two ends thereof which extended upto the corner of the upper lid. As against these R.Ws. 1, 2, 3, 10, 11 and 12 have pledged their respective oaths to the effect that the paper seals were pasted very tightly and the lac seals over the thread were put close to the knob, say at a distance of ½" only from the knob. Rule 21, Clause (5) of the R.P. Rules, 1951 enjoined the Presiding Officers to seal ballot boxes in such a way as would render the re-opening thereof not possible without breaking their paper and other seals. Necessary instructions also had been issued to the Presiding Officers on this score. The presumption is that they fully observed and complied with the above rules. The said presumption is further strengthened by the sworn testimony of R.W. 1 to R.W. 3 and R.W. 10 to R.W. 12. Of these R.Ws. 10 and 11 are Presiding Officers, while others are polling agents of one or other of the respondents. We would therefore prefer to accept respondents' evidence on this point and hold that the ballot boxes had been properly sealed by the Presiding Officers.

20. *Sub-para.* (3).—P.W. 12 who was the polling agent of respondent No. 5 at Latar and other polling stations is the only witness who has spoken of a demonstration of opening a ballot box, held by Tribeni Singh Patwari before the Presiding Officer at Latar. This statement of P.W. 12 stands wholly uncorroborated. Moreover, in view of the demonstrations held before us by P.Ws. 12 and 19, the alleged demonstration of opening of ballot box made by Tribeni Singh loses all its importance.

21. *Sub-para.* (4).—In support of the petitioners allegations about the curtailment of polling hours, P.W. 4 who was the polling agent of respondent No 5 at Cookargara and other polling stations says that at about midday polling used to be stopped for half an hour and used to be closed at 4-30 P.M. . In his cross examination the same witness, however, admits that all the voters who reached the polling booth by 4-30 P.M. were allowed to cast their votes. Obviously therefore none of the voters who went to the polls were deprived of their franchise. Interval of half an hour towards midday in holding the polls did in no way affect any of the contesting candidates in the matter of securing their votes.

P.W. 7 in his cross-examination merely states that the Presiding Officers used to rise for half an hour towards the midday and the polling used to be stopped at that time. This statement of P.W. 7 does in no way signify curtailment of the polling hours. Hence we find no substance in this contention of the petitioner.

22. *Sub-paras.* (5) & (6).—In sub-paras. 5 and 6 of para. 6 of the petition the petitioners complain of non-compliance with the provisions of Rules 32, and 33 of R.P. Rules, 1951 by the Presiding Officers, in as much as the Presiding Officers are said to have omitted to make packets of unused and invalid ballot papers, marked electoral rolls etc. and prepare accounts of ballot papers in form No. 10. P.W. 7 is the only witness who comes forward to say that the unused ballot papers and marked electoral rolls were not put into packets in his presence. This witness was a rival candidate at the election, and as such he cannot be considered as disinterested. Moreover, he states that he does not know what the Presiding Officer did with the unused ballot papers. So his evidence does not exclude the possibility of the preparation of form No. 10 or sealing of the packets by the Presiding Officers while this witness was not watching.

P.W. 8 was polling agent of another rival candidate. He on the other hand swears to the preparation of returns and making of packets by the Presiding Officers soon after the close of the poll in his presence.

R.W. 3 who acted as polling agent of respondent No. 1 at Bidh polling station also swears to have seen the Presiding Officer making three packets, one of unused ballot papers, the other of marked electoral rolls and the third of ballot papers. He, however, did not mark what the Presiding Officer did with those packets at the end.

R.W. 2 also has sworn to the said factum of making the packets and sealing the same. The learned advocate for the petitioner has pointed out to us the following statement of R.W. 2:—

"The Presiding Officer used to keep with him the marked electoral roll".

This statement does not necessarily mean that the Presiding Officer withheld the marked electoral rolls and did not at all make over the same to the police guard in a sealed packet. It may be that the marked electoral roll was not put into an envelope and sealed by the Presiding Officer in presence of this witness. In fact we have got forms No. 10 (Ex. RW 9/1) of all the 59 polling stations except one and the marked electoral rolls in sealed packets. So the petitioners' allegations on this score are apparently based on mis-apprehension and surmises.

23. *Sub-para. No.* (7).—One Kasgi (R.W. 6) polling agent of respondent No. 5 has stated before us that the Returning Officer failed to verify the accounts of ballot papers which had been submitted by the Presiding Officer with the number of ballot papers actually found by him at the time of counting.

Shri Shankhdhar Singh (R.W. 13) who acted as the Returning Officer at Sahdol has sworn to have verified the accounts of ballot papers with those given in form No. 10 and no discrepancy was noticed by him. As a matter of fact we note that the said Returning Officer got form No. 14 prepared on the dates of counting in his presence as also statement in form No. 16. They have been exhibited before us as P.W. 8/3 to P.W. 8/7. So the petitioners' allegations about non-verification of accounts by the Returning Officer is found to be incorrect.

24. *Sub-para. No.* (8).—There is not an iota of evidence in proof of the petitioners' averment regarding the refusal of the Returning Officer to allow respondent No. 5 or his agent to secure copy of or extracts from form No. 16.

25. *Sub-para. Nos.* (12) & (13).—P.Ws. 6, 7 and 20 are the only witnesses who spoke of the opening of 23 ballot boxes which had lost their outer symbols in order to find out the 5 missing ballot boxes of respondent No. 5. As stated by these witnesses the Returning Officer did not re-seal the remaining 18 ballot boxes lac seals of which had been broken by the said Returning Officer in order to know the identity of those boxes having no outer symbols. As stated above P.W. 6 was the polling agent of respondent No. 5 (P.W. 20). According to P.W. 6 five of Ganga Singh's boxes were found to be missing. 23 ballot boxes were brought out, none of them had their outer symbols. Their window covers were shifted and 5 of them were found to contain the name of Ganga Singh. The rest were sent back to Kothari. Shri Ganga Singh requested the Returning Officer to count the remaining 18 ballot boxes also. He was told that he had no time to do so. Ganga Singh (P.W. 20) has also deposed to the above effect. He, however, added that neither the contents of the 18 boxes were counted that evening, nor were they re-sealed inspite of his objection. P.W. 7 the socialist candidate has fully supported the above quoted statement of P.W. 6 and P.W. 20.

R.W. 13, the Returning Officer, on the other hand, has stated before us on oath that the boxes, window covers of which had been opened by him for the purpose of identification on the first day and whose contents were not counted that day, were re-sealed. In view of this statement of Shri Shankhdhar Singh (R.W. 13) and in absence of any written complaint filed before him by respondent No. 5, we do not feel inclined to accept the petitioners' case regarding the omission on the part of the Returning Officer to re-seal the 18 ballot boxes window covers of which had been shifted by him on the 29th evening, particularly because we do not expect an officer of Shri Shankhdhar Singh's standing to act in contravention of Rule 46(2) of the R.P. Rules.

26. *Sub-para. No.* (14).—Next the petitioners' complaint is that the statements in form No. 10, which had been prepared by the Presiding Officers and submitted to the Returning Officer were not shown to the respondent No. 5 and his counting agent at the time of counting, and that no statements in form No. 14 were prepared by the Returning Officer in presence of respondent No. 5 or his agent.

P.W. 6 *and* P.W. 20 (*i.e.* to say that Respondent 5 and his counting agent) are the only witnesses on this point. We have already noted above that form No. 10 of all the 59 polling stations, except one, as also form No. 14 of all the contesting candidates have been brought on the record and exhibited in this case.

R.W. 13 (*Shri Shankhdhar Singh*) has sworn to the preparation of form No. 14 and check slips under his supervision at the time of counting. Might be, that, in the great rush of work, the Returning Officer was not in a position to allow the several candidates and their agents to examine and scrutinise these statements on the dates of counting. Perhaps the grievance of respondent No. 5 on this score arises out of the Returning Officer's inability to spare these statements to respondent No. 5 and other candidates for the purpose of scrutiny. Any way, this was not a breach of any rule.

27. *Sub-para. No.* (20).—P.W. 7, the socialist candidate, has stated before us that ballot papers thrown in lump were found in and recovered from the ballot boxes of respondent Nos. 1 and 2. P.Ws. 6 and 20 have, however, nothing to say in this matter. Thus we find that the solitary evidence of P.W. 7 on this score stands wholly uncorroborated and as such is un-acceptable. From our above findings it follows that provisions of R.P. Act and Rules have not been infringed as contended by the petitioners.

28. *Sub-para. No.* (21).—Admittedly the counting commenced late in the evening of 29th January, 1952, stopped after counting the contents of the ballot boxes of respondent No. 5 and re-commenced the next day namely 30th January, 1952. The Returning Officer has given a very satisfactory reason for the postponement of the counting. He could not employ his counting staff to work at night and so the counting had to be postponed. There was no irregularity in the matter.

29. *Sub-para. No.* (22).—There is absolutely no evidence to support the petitioners' allegation in sub-para. 22 of para. 6 of the petition. The Returning Officer (R.W. 13) has, however, very definitely stated before us that no candidate or agent offered tea and sweets to any of the counting staff. Hence the petitioners' statement on this score is held to be untrue.

30. *Sub-para. No.* (23).—Similarly the petitioners' allegations about the direction given by the Presiding Officer of Dhurwasin, Kulmi, Chhori, Latar and Pasaun polling stations to the voters not to touch the ballot boxes while casting their votes fails for want of evidence. True, a large number of ballot papers were found to be outside the ballot boxes at these polling stations and were consequently invalidated, but not through the fault of the Presiding Officer. Perhaps it was due to the ignorance of or mis-handling of the ballot papers by the voters.

31. *Sub-para. Nos.* (24) *and* (25).—Petitioners have led no evidence in proof of their statement contained in sub-paras. 24 and 25 of para. 6 of their petition. Shri Shankhdhar Singh (R.W. 13), on the other hand, definitely denied admittance of any person other than candidates or other agents in the counting hall.

32. *Issue No. V*(3).—The learned advocate for the petitioners has very candidly conceded to the total lack of evidence on petitioners' side to prove inadequate arrangements for the safe transport and custody of the ballot boxes. So the question involved in this issue is answered in the negative.

33. *Issue No. V*(4).—Since we have not found any contravention or infringement of election rules in the matter of poll from Pushprajgarh constituency, the main question involved in this issue is answered in the negative.

34. *Issue No. V*(5).—No direct evidence has been or as a matter of fact could be adduced by the petitioners to prove their case of tampering with the ballot boxes. The learned advocate for the petitioners has referred to various discrepancies in the matter of total number of ballot papers issued at different polling stations for the general as well as the reserved seats and the total number of ballot papers recovered from the ballot boxes of different candidates at the time of counting and argued therefrom that the said discrepancies cannot be explained except by accepting the petitioners' case about tampering with the ballot boxes. The learned counsel for the petitioners has argued that an examination of forms No. 10 and 14 regarding the different polling stations, would show that in the case of several polling stations, there is an excess of ballot papers found at the time of counting over those which, according to form No. 10, should have been found in the ballot boxes.

35. We have examined the different charts submitted at the time of argument by the learned counsel for both the parties and we have checked the figures contained therein with the Exhibits on record. We do not consider it necessary to reproduce the charts in full but we will only give our conclusions in regard to matters shown in the chart and the basis of such conclusions. In polling station No. 1 the total number of ballot papers expected to be in the ballot boxes was 496 whereas the total number of ballot papers found at the time of counting was 485 *i.e.* there was a deficit of 11, but there were 25 invalid votes. Similarly for polling station No. 2 there was a deficit of 40, but there were 38 invalid votes. For polling station No. 3 the deficit was 8 and invalid votes were 16. In polling station No. 4

there were 15 deficit votes but 13 were invalid. Now these four polling stations were in charge of the same Presiding Officer and may be taken as forming one group. The difference between the invalid votes and the apparent deficit comes to a net excess of 18 ballot papers The proportion of this excess to the total number of votes polled in this group of polling stations comes to 1 per cent. which is negligible.

36. In the same manner the second group consists of polling stations No. 5 to 9. For these polling stations there is a net excess of 4 which works out at 12 per cent.

37. The third group consists of polling stations No. 10 to 14. In this group there is neither any excess nor any deficit.

38. The fourth group consists of polling stations No. 15 to 19 out of which the form No. 10 is missing for polling station No. 15. For this group there is a net deficit of 2.

39. The fifth group comprises polling stations No. 20, 21 and 22, for which there is a net excess of 9 which works out at 1:5 per cent.

40. The sixth group of polling stations consists of Nos. 23 to 27 for which there is only a net deficit of 1 ballot paper.

41. The seventh group contains polling stations Nos. 28 to 32 for which there is a net deficit of 1 ballot paper only.

42. Polling station Nos. 33 to 37 form another group for which there is a net deficit of 8 ballot papers only which works out at 2 per cent.

43. The next group is of polling station Nos. 38 to 42 for which there is a net excess of 8 ballot papers which is equal to 2 per cent.

44. Polling station Nos. 43 to 47 form another group The net deficit for the group is equal to 12 *i.e.* 4 per cent.

45. The next group is of polling station Nos. 48 to 52 for which there is a net deficit of 22 which works out at 2 per cent of the total votes polled.

46. Another group of polling stations consists of Nos. 53 to 57. There is a net deficit of 27 which works out at 7 per cent. of the votes polled.

47. Lastly polling station Nos. 58 and 59 form one group for which there is a net deficit of 1 *i e.* 1 per cent. of the votes polled.

48. It is apparent, therefore, that ignoring the deficits of 1 and 2 ballot papers only for a group of polling stations, in the case of all other polling stations the excess or deficit form a negligible percentage of the votes polled and it is apparent that such low percentage could give no indication of tampering nor could it have any material effect on the result.

49. Taking all the 59 polling stations as a whole we find that the total number of ballot papers expected in the ballot boxes was 28,781, whereas the total number of valid votes found in the boxes at the time of counting was 24,201. The total of deficits of all the polling stations comes to *4,686* ballot papers. According to the check slips the total number of rejected ballot papers was 4,547. Thus there is a net deficit for all the polling stations of only *139* which works out at 5 per cent, of the total votes polled. It is apparent that this net deficit is negligible and could not possibly indicate any tampering nor could it have any material effect on the result of the election.

50. It follows, therefore, that an examination of the figures for all the polling stations taken together or in groups, shows conclusively that the net deficits or excesses are too negligible to amount to proof of tampering or to indicate that thereby there was any material effect on the result of the election. The contention of the learned counsel for the petitioners on this point, therefore, is not sustainable and we find that his issue stands un-proved.

51. *Issue No. V*(6).—In view of our findings above this issue does not arise.

52. *Issue No. VI*(1).—There is absolutely no evidence to prove the petitioners' allegations about any member of the Congress Organisation having indulged in mal-practices of undue influence and coercion in favour of the Congress candidates and against the interest of K.M.P.P. candidates. P.Ws. 1, 2, 3, 5, 13 and 15 have, however, spoken of canvassing done by the Presiding Officers of different polling station in favour of the Congress candidates.

As stated by P.W. 1 the Presiding Officer of polling station Naugaon advised the people to vote for the Congress saying that by doing so they would get happiness and prosperity and when the witness objected to this, he was turned out by the

said Presiding Officer. As such the witness did not attend the polling there. He did not, however, report the incident to any one that day. He says that the Presiding Officer was some Srivastava.

53. *According to P.Ws. 2 and 3* Shri Girdhar Prasad Naib, Tehsildar, who acted as the Presiding Officer at Bindh polling station advised the people to vote for the candidates who would do them good and further added that respondent No. 1 while acting as forest clerk had troubled the people much and so if he would become a Minister the people would very well understand what would happen to them. In the end the Naib Tehsildar is said to have advised people to act as they thought fit. No written report of this matter was made to any one.

P.W. 5 also has complained against the above conduct of Shri Girdhar Prasad Naib Tehsildar who while acting as Presiding Officer at Manaura also advised the people that if they voted for the Congress, it would be to their good, whereas, Shri Ganga Singh, respondent No. 5 had already displayed his tyrannical habits as a forest clerk. When Sabir Husain, agent of K.M.P.P. candidate protested, the Naib Tehsildar is said to have added that he was telling the truth. Again at Munda polling station the same Naib Tehsildar is said to have threatened the voters saying that if they did not vote for 'bullocks' they would be deprived of their own bullocks. No written objection, however, was filed on this score.

P.Ws. 13 and 15 have also deposed to the canvassing of the aforesaid Naib Tehsildar at Venkat Nagar polling station and the threat held out by him about the seizure of bullocks.

R.W. 1 swears to have acted as polling agent of respondent No. 1 at Venkat Nagar, Pondi and Manaura polling stations. On these polling stations the Presiding Officer did not according to this witness, tell any voter for any candidate, nor did he criticise any one.

R.Ws. 2 and 3 polling agents of respondent No. 1 at Munda and Bindh polling stations refute the petitioners' evidence in regard to the alleged canvassing or threat made by Shri Girdhar Prasad Naib Tehsildar.

R.W. 6 asserts to have cast his vote at Venkat Nagar. The Presiding Officer did not tell him any thing when he went to cast his vote.

R.W. 10 who acted as Presiding Officer at Naugavan and other polling stations definitely denies having resorted to canvassing for any party and asserts to have strictly followed the instructions which had been given to him to remain neutral. He further states that Shri Shambhu Dayal was present at almost all the polling stations as a polling agent of some candidate. Thus he by implication refutes the petitioners' allegation of Shambhu Dayal having been turned out of Naugavan polling station.

R.W. 11 is Shri Girdhar Prasad Naib Tehsildar against whom so many of the P.Ws. have deposed. Shri Girdhar Prasad also denies to have made any canvassing at any of the polling stations where he acted as Presiding Officer. He further denies to have turned out any authorised polling agent from any of the polling stations. No complaint written or oral was made to him about canvassing by any officer.

R.W. 12 supports R.Ws. 10 and 11 in the matter of any canvassing done by the Presiding Officer.

54. In absence of any complaint filed before the Presiding Officer or submitted to the higher authorities about the alleged mis-conduct of the two Presiding Officers and in face of the Presiding Officer's denial, we feel reluctant to accept the petitioners' case on this point. Under the rules, canvassing by any Government official in favour of any candidate at the last election was reprehensible and particularly if those officers employed on election duty had resorted to such an act of canvassing, they were to be severely dealt with. Any such mis-conduct on their part ought to have been brought to the notice of higher authorities then and there. It would be rather late for the petitioners to come forward with such complaint against them in their present petition. The issue is accordingly answered in negative.

55. *Issues Nos. VI(2) & (3).*—The question involved in these sub-issues do not arise in view of our above findings.

56. *Issues Nos. VII(1) & (2).*—These issues have not been pressed. It has not been shown to us that the return of election expenses filed by respondent Nos. 1 and 2 is incorrect and false. Both the issues are therefore decided against the petitioners.

57. *Issue No. VIII.*—As a result of our findings on the several issues mentioned above, the petitioners are obviously entitled to no relief. The petition, therefore, stands dismissed with cost of Rs. 250 (Rupees Two Hundred and Fifty only) payable by the petitioners to Respondent Nos. 1 and 2.

58. Shri B. C. Dey, advocate, and Shri Keshau Prasad, pleader, appeared for the petitioners, while Shri Harish Kumar Srivastava and Shri G. P. Misra, pleaders for the Respondents.

Announced.

The 26th November 1952.

(Sd.) E. A. N. MUKARJI, *Chairman.*
(Sd.) J. K. KAPOOR, *Member.*
(Sd.) U. S. PRASAD, *Member.*

ANNEXURE

IN THE COURT OF ELECTION TRIBUNAL VINDHYA PRADESH AT REWA

FINDINGS

Out of the Election petitions pending before this Tribunal there are 11 such petitions in which written pleas have been put in by parties and in which among other matters a plea of non-joinder of parties has been raised which calls for decision. In order to explain the nature of the pleas that have been raised in these petitions, we give below the number of such petitions and the issues framed on the question of non-joinder.

1. *File No.* 1/74.—No. I(a). Was Shri Sheo Kumar Sharma a necessary party to this petition,

(b) If so, what is the effect of his non-joinder?

(NOTE.—It may be noted that Shri Sheo Kumar Sharma mentioned in this issue was a candidate who had withdrawn his candidature within the prescribed period.)

2. *File No.* 2/140.—No. XVI. Were Shri Pancham Lal Jain, Shri Vaidya Jamuna Pd. and Shri Shambhu Nath Shukla necessary parties to this election petition and what is the effect of their non-joinder?

(NOTE.—The persons mentioned in this issue are those who had been nominated but had withdrawn their candidature within the prescribed period.)

3. *File No.* 3/141.—I(a) Is the constitution of the array of the respondents defective by reason of non-joinder of Shri Ravendra Singh and Shri Madsudan Prasad?

(b) Is such defect, if any, fatal to the maintenance of the petition?

(NOTE.—Persons mentioned in this issue are stated to have withdrawn their candidature within the prescribed period.)

4. *File No.* 4/164.—IV(a) Were Shri Abhai Raj Singh, Shri Ram Pratap Singh and others who were nominated and who are alleged to have withdrawn, necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

5. *File No.* 9/237.—I(a) Whether the candidates who had been nominated and who had withdrawn their candidature, were necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

6. *File No.* 10/23.—I(a) Was Shri Indra Bahadur Singh who was a nominated candidate and who had withdrawn his candidature, a necessary party to this petition?

(b) If so, what is the effect of his non-joinder?

7. *File No.* II/239.—I(a) Were the candidates who had been originally nominated but who had withdrawn their candidature under section 37 of the Representation of the People Act, necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

8. *File No.* 12/249.—I(a) Were Shri Somchand Jain and Shri Chhotey Lal necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

(NOTE.—It is to be noted that both the persons mentioned in this issue, namely Shri Somchand Jain and Shri Chhotey Lal were candidates whose nominations had been rejected.)

9. *File No.* 13/260.—XVIII. Was Shri Shankar Prasad a necessary party to this petition and what is the effect of his non-joinder?

(NOTE.—It may be noted that Shri Shankar Prasad was a candidate who had been nominated but who had withdrawn his candidature within the prescribed period.)

10. *File No.* 14/304.—I(a) Were Shri Dan Bahadur Singh, Shri Saraswati Prasad and Shri Govind Singh necessary parties to this petition?

(b) Is their non-joinder fatal to the petition?

(NOTE.—It may be noted that Shri Dan Bahadur Singh and Shri Govind Singh were candidates whose nomination papers had been rejected and Shri Saraswati Prasad is stated to have withdrawn his candidature.)

11. *File No.* 15/307.—I(a) Were Shri Puran Chand and Shri Polwa necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

(NOTE.—It may be noted that both the persons mentioned in this issue were candidatres whose nomination papers were rejected.)

It is apparent, from the above list, that in two of the above petitions, namely No. 12/249 and 15/307, and partly in No. 14/304, the question arises whether a candidate whose nomination paper was rejected at the time of scrutiny is a necessary party to these election petitions, under section 82 of the Representation of the People Act, 1951, and what is the effect of his non-joinder.

In the other 8 cases and in the case of one person in file No. 14/304 the question is whether candidates whose nomination papers had been accepted at the time of scrutiny but who had later withdrawn their candidature within the prescribed time, were necessary parties to these petitions under the provision of section 82 of the Representation of the People Act, 1951, and if so, what is the effect of their non-joinder.

These preliminary issues have been argued at length before us by Mr. A. P. Pandey Advocate for the respondents who had raised the plea of non-joinder, and by Mr. R. N. Basu on behalf of the petitioners, in the different cases. They have been assisted by other lawyers representing both the parties in all the petition. We proceed to discuss the first question enunciated above namely, whether a candidate whose nomination paper had been rejected is a necessary party within the meaning of section 82 of the Representation of the People Act, 1951.

On this point we have heard the rather ingenuous arguments advanced by Mr. A. P. Pandey. He has urged before us that a candidate whose nomination paper has been put in at the proper time and place, and which bears the signatures of a proposer and a seconder, and is accompanied by declaration of appointment of an election agent and also by a receipt of deposit of security, has become duly nominated thereby. In case the candidate is a member of Scheduled Tribes, a further declaration has to be attached with the nomination paper. The learned counsel has argued that, having done these things the candidate "*duly nominates himself*" without the intervention of any Returning Officer. In other words, this contention amounts to this that, by the unilateral act of the candidate in putting in his nomination paper, along with certain declarations and receipt, gives him the status of a 'duly nominated candidate'. We are unable to see the soundness of this proposition as advanced by Mr. A. P. Pandey. According to the law Lexicon of British India by B. R. Aiyar (Edition of 1904) the significance of the word 'duly' has been given as something done 'regularly', fitly, in a suitable or becoming manner; in due manner; in due time or proper manner; according to law or some rule of law. Thus it is clear from these interpretations that in order to become a *duly nominated* candidate, the nomination paper must stand the test of scrutiny provided in section 36 of the Representation of the People Act, 1951. This section provides that on a date fixed for the purpose, the Returning Officer has to examine the qualifications of the candidate and of his proposer and seconder, also to examine the signatures in order to detect fraud if any and to judge whether the provisions of section 33 and 34 have been complied with. Unless and until the Returning Officer finds the nomination paper in order and according to the requirements of law, it will be idle to say that the candidate has become duly nominated.

The learned counsel has referred to section 100 of the Representation of the People Act Clause C and has urged that a wrongful rejection of a nomination paper is sufficient to avoid the whole election. This contention has, however, no bearing on the question now before us, because it is a matter which would be gone into in any case, if pleaded by either party, even in the absence of the candidate whose nomination paper had been rejected.

It may be mentioned here that a candidate whose nomination paper had been rejected, could if he so desired either come in as a petitioner or as a respondent under the provision of section 90, sub-section 1 of the Representation of the People Act, and he could also file recriminations under section 97 of the said Act. Hence the absence of such a person from the original list of respondents cannot be said to be prejudicial to the proper decision of the case over and above the fact that section 82 does not make it necessary to implead him.

The learned counsel for the respondents has not been able to cite any previous decision in support of his proposition namely that a candidate whose nomination paper was rejected is a necessary party under section 82 of the Representation of the People Act.

The learned counsel for the petitioners has argued that sections 33 to 36 of the Representation of the People Act lay down the necessary requisites which would render a person a duly nominated candidate. We agree that sections 33 and 34 contain the necessary requirements which have to be fulfilled by a candidate when filing a nomination paper, and section 36 lays down the provisions for testing the due compliance with the requirements of law. We consider that these different steps in the process of nomination comprise a *series of acts* which must be fulfilled before a person can claim to be a 'duly nominated candidate'.

For these reasons we are of the opinion that a candidate whose nomination paper had been rejected at the time of scrutiny cannot be called a 'duly nominated' candidate and hence he is not a necessary party within the meaning of section 82 of the Representation of the People Act. While holding this view, we are not oblivious of the provisions of section 100(c) which provides that an election may be declared to be wholly void, if the result of the election has been materially affected by the improper acceptance or rejection of any nomination. It was open to the parties to an election petition to raise such plea and seek a decision thereon. It was open to a rejected candidate as well to come forward and be joined as a respondent in compliance with section 90(1) within the prescribed period.

II. We have found above that a candidate cannot be considered to have been duly nominated before his nomination papers are scrutinised by the Returning Officer under section 36 of the Representation of the People Act and accepted by him. The next question is whether after such scrutiny, the candidate whose nomination paper has been found to be in order becomes a person who must be made a party under the provision of section 82 of the Representation of the People Act, which lays down that candidates who were "duly nominated at the Election" shall be joined as respondents. In the cases now under consideration both parties admit in this connection that the candidates whose non-joinder is in dispute, were those whose nomination papers had been accepted at the time of scrutiny, but who later withdrew under section 37 R.P. Act.

We wish to remark at the outset that we must presume the framers of law to have provided for results which are reasonable and effective and not such as would lead to undesirable or harmful consequences. Proceeding on this principle, we must assume that section 82 R.P. Act contemplates the impleading of living and existing persons and not of persons whose existence has been terminated by act of God or by operation of law.

In the case under consideration certain candidates had of their own choice, availed themselves of the opportunity provided in section 37 R.P. Act and *"terminated their candidature"* and has this fact published in an official list (u/s 38 R.P. Act) for the information of the whole Electorate. By this act of the candidates, which has been officially recognised and accepted, they had ceased to exist in the election field. They could not even withdraw their notice of withdrawal once given within the prescribed period. *By operation of Election Law therefore such candidates had ceased to exist even as candidates what to speak of 'duly nominated candidates'.*

We cannot conceive of any interpretation of section 82 R.P. Act which would compel a petitioner to bring back to life such candidates whose existence as such ceased after their withdrawal. Such candidates had publicly left the arena for good, and to drag them again *by force* into the later stages of the Election conflict would, in our view, meaningless. Of course such candidates on reverting to the position of *voters* after their withdrawal, had every right as voters, to come in either as petitioners or, to apply to be joined as respondents within the period prescribed by section 90 sub-section (1) R.P. Act, or to file recrimination u/s 97 R.P. Act. *Not having chosen to do so,* we fail to see what interests of justice would be served by impleading them *at the instance of the contesting respondents* rather this step would impede justice by helping these respondents who may

desire to prolong the case unnecessarily. For this reason we are of the opinion that such candidates, who had withdrawn u/s 37 R.P. Act are not necessary parties to these petitions with the meaning of section 82 R.P. Act.

As regards the cases cited before us we may remark generally that the argument in such cases decided under the Election Rules of 1920 are of no help to us because under those laws no time limit was prescribed for withdrawal, and when therefore the act of withdrawal was not considered such a solemn and serious act of self effacement as under the present law. We noticed the trend of the change in the law by referring to the Shahabad case decided recently, 1947 when it was found that non-joinder of a candidate who had withdrawn is not fatal (*See* Indian Election Cases Sen & Poddar pages 750-751). *See* also Ludhiana Mohammadan Rural Constituency Case, Sen & Poddar, page 970.

Our view also finds support in the order passed in a recent case by the Election Tribunal at Allahabad in Election Petition 316 of 1952, in which it was found that a candidate who had withdrawn his candidature, is "no larger actually interested in the election" and is not a necessary party.

Mr. Pande has also cited a Baroda case No. 19 of 1952 published in the *Gazette of India Extraordinary*, dated 11th August 1952. In that case the petitioner was a candidate whose nomination paper had been rejected. He alleged that the rejection was wrongful and improper and that the result of the election was materially affected thereby. In that case there was no issue about non-joinder of candidates who might have withdrawn their candidature. So any remarks made by the Tribunal on this question were in the nature of obiter.

In this view of the matter we hold that the candidates who withdrew their candidature under section 37 of the Representation of the People Act 1951 are not necessary parties within the meaning of section 82 of the said Act.

Announced.

The 26th November 1952.

(Sd.) E. A. N. MUKARJI, *Chairman.*

(Sd.) U. S. PRASAD, *Member.*

OPINION RECORDED BY SHRI G. L. SHRIVASTAVA RE: NON-JOINDER

1. Having unanimously recorded the finding on the issue of non-joinder of a candidate whose nomination was rejected by the Returning Officer under section 36 of the Representation of People Act, 1951, the Tribunal has proceeded to consider and decide the issue of non-joinder of candidates those nomination was accepted but who duly withdrew their candidature within the time prescribed by section 37 of the Act and who, therefore, were not included in the list of valid nominations under section 38 of the said Act. This issue is common in the cases referred to in the findings already recorded and the finding hereinafter recorded would be the finding on the identical issue of law in those cases and would form part of the file of those cases.

2. This common issue of law may be stated thus:—

Are the candidates whose nomination was accepted under section 37 of the Representation of People Act 1951 but who withdrew their candidature under section 38 of this Act a necessary party to the Election Petitions in question within the meaning of section 82 of the Act.

3. The decision of this issue depends on the determination of the meaning and signification of the expression 'duly nominated' used in section 82 of the Representation of the People Act 1951 hereafter referred to as the Act which provides as follows:

> "Parties to the petition—A petitioner shall join as respondent to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated".

4. The learned counsel for both sides argued this point at length with ability and vigour. This expression "duly nominated" has not been defined in the Act. I have tried to interpret these words after a careful integrated study and examination of the various provisions of the Act where the words occur in the light of the accepted canons of interpretation. With the upmost respect for my learned colleagues I am constrained to say that I have not been able to agree with the construction put by them on this expression used in section 82 of the Act. I, therefore, hold that a candidate whose nomination was accepted under section 37 but who withdrew his candidature under section 33 should be regarded as 'duly

nominated' within the meaning of section 82 of the Act. The reasons for this opinion have been set out below:

5. In the absence of any judicial guidance or authority dictionaries can be consulted. [Maxwell: the interpretation of statutes 9th edition page 33 where the above passage has been reproduced from Kerr V. Kennedy (1942)/K/B. 409, 413]. I confess that dictionaries which were available have not given me much guidance in construing the expression 'duly nomination' used in the particular context of the Act.

6. Before calling to my aid the method of viewing this expression in the historical setting *i.e.* in the light of its use in previous legislations and another method of ascertaining its interpretation in *Pari materia* statutes I would do well to examine all the parts of this Act where this expression is used for appreciating its true meaning. In the interpretation of statutes (5th edition) Maxwell remarks at page 30 on the authority of Lord Esler M. R. and Fry L. J. In the case Lancashire and Yorks Ry. Co. V. Knowles 20 O.D.B. 391 that such a survey is often indispensable even when the words are the plainest, for the true meaning of any passage is that which (being permissible) best harmonies with the subject and with every other passage of the statute. In section 33 of the Act words 'duly nominated' have been used in sub-section 3 and in the second and third provisos to this sub-section in connection with some declarations and certificate.

7. According to sub-section (3) which follows the requirement of the filing of a duly completed nomination paper as prescribed in sub-section (1) non-candidate shall be deemed to be 'duly nominated', unless a declaration of appointment of an election agent is delivered along with the nomination paper. So also no candidate shall be deemed to be duly nominated unless the formalities prescribed in the said two provisions are complied with.

8. The relevant part of section 34(1) of the Act stands thus:

> "A candidate shall not be deemed to be duly nominated unless he deposits or causes to be deposited in the case of an election to Parliament (other than a primary election) a sum of five hundred rupees....."

9. Then follow sections 33 and 36, relating to the scrutiny of nominations. Under section 36(2) the Returning Officer has to decide all objections and may refuse any nomination on any of the five grounds mentioned in it. Again according to sub-section (3) of this section the nomination of a candidate cannot be refused on the ground of irregularity in respect of a nomination paper if the candidate has been *duly nominated* by means of another nomination paper in respect of which no irregularity has been committed.

10. Next section 37 refers to the withdrawal of candidature within the prescribed time by means of a duly completed notice in writing. After some formalities the Returning Officer has to publish a list of valid nominations under section 38 in accordance with Rules I and II of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. Section 39 refers to nominations for the Council of State and Legislative Councils and the aforesaid provisions have been made applicable to these nominations. Then the Chapter I (Nominations of Candidates) of Part V ends.

11. It may be said that the method of defining the expression by negative propositions is perceptible in sections 33 and 34 of the Act. It seems to be abundantly clear that a candidate should be deemed to be duly nominated if he satisfies the requirements of law and passes the test of scrutiny.

12. Ordinarily, this class of duly nominated candidates is narrowed down to validly nominated candidates after the withdrawal of candidatures under section 37 and the publication of the list of valid nominations under section 38 of the Act. The crux of the question is whether the words 'duly nominated' used in section 82 of the Act includes this larger class or is to be deemed to be confined to the smaller class of valid nominations after the withdrawal. In my opinion these two classes have distinctive status and legal character under the Act for the purposes of election and proceedings connected with it. They have been used in the statute in a clear and unambiguous manner and in some places in just a position which leaves no doubt about their distinct meaning and signification.

13. Again, in Chapter II, section 46 of the Act, the following passage occurs in the beginning of the section: "A candidate who has been duly nominated under this Act and who has not withdrawn his candidature in the manner and within the time specified in sub-section (1) of section 3.....".

Here due nomination under the Act has been recognised and the Act of withdrawal is not contemplated as extinguishing the status acquired already as a duly nominated candidate.

14. The Central Government has framed the rules for carrying out the purposes of the Act under section 169 thereof. These rules are described as "the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951". The question is whether any part of these rules can be used in construing the expression in question. According to Maxwell general rules and forms made under the authority of an Act may be referred to for the purpose of assisting in the interpretation of the Act (page 39 of the Edition of the peasise herein before adverted to). In Rule No. 2 clause (f) stands as follows:—"Validly nominated candidate" means a candidate who has been duly nominated and has not withdrawn his candidature in the manner and within the time specified in sub-section (1) of section 37 or in that sub-section read with sub-section (4) of section 39, as the case may be. This definition confirms the view expressed above.

15. I am not prepared to think that if the framers of the Act intended that only validly nominated candidates, that is, duly nominated candidates who had not withdrawn their candidature should be impleaded as respondents, they would not have used the words as used in section 82 of the Act. The language of this section would have been different if this was the object and intention. As it is, it admits of no doubt. The language is plain and such language best declares without more, the intention of the law giver and is decisive of it. The rule of construction is to intend the legislature to have meant what they have actually expressed. Maxwell goes further and says "It matters not, in such a case, what the consequences may be". Undoubtedly if two meanings are possible and one leads to absurdity, inconsistency or injustice, the other may be preferred. But if two meanings are not possible, the task of interpretation does not arise. In this connection it may be safely remarked that in construing the words "duly nominated" used in section 82 of the Act as I have done, no question of absurdity or injustice arises. The argument based on absurdity or injustice has been described as a 'Snare' unless absurdity or injustice is extremely gross and palpable. In this matter there is no absurdity or injustice involved in this interpretation at all. This point will be elucidated further hereafter.

16. The legislation repealed by section 171 of the Act *viz.* the Indian Election Officers and Inquiries Act 1920 and other laws relating to this subject may now be looked at for the purpose of ascertaining the meaning of the expression in question. By other laws is meant the order in Council known as the Government of India (Provincial Elections) corrupt practices and Election Petition Order 1936, dated 3rd July 1936 and the Acts of Provincial Legislatures and Rules framed to regulate the form of election petition and the persons who are to be made parties thereto and other matters of procedure under para. 6 of Part III of this Order. By the authority of this para., the provincial Government could authorise the Governor to exercise his individual judgment to dismiss petitions for non-compliance with prescribed requirements. The provinces framed their own rules which indicate that uniformity was lacking. To illustrate this point the case of Shahabad Mohammadan Rural Constituency 1946 (Manjoor Husain *vs.* Gholam Mohiuddin) reported at page 746 of Indian Election Cases by Sen & Poddar may be referred to. It was held in this case that non-joinder of nominated candidate who had withdrawn from contest was not fatal to the claim for seat and the case of Banaras-*cum*-Mirzapur cities was distinguished on the ground that the law in V.P. and Bihar differed.

17. In Karnal South General Constituency case (Pt. Mangal Ram *Vs.* Chowdhary Anant Ram) reported at page 438 of the same book it was held that where the petitioner claimed the seat for himself it was incumbent upon him to implead all other candidates who were nominated at the election irrespective of whether their nomination papers were withdrawn before or after the scrutiny or were rejected as a result of the scrutiny. On the same ground the petitioner's claim for the seat was held inadmissible in Ambala and Simla (*Mohammadan*) Constituency Case 1937 reported at page 6 of the same book, though the nominated candidate had subsequently withdrawn.

18. It may be noted that the claim for seat was inter-linked with the necessity of joining all nominated candidates as respondents irrespective of the withdrawal of candidature in the laws of various provisions. These laws do not seem to be absurd or devoid of reason. The author of the 'Law of Elections and Election Petitions' (Nanakchand Pandit) opines that the reason for imposing this duty is that each of the other candidates may have the opportunity to raise recriminations to show that the petitioner is not entitled to this declaration which he claims. Undoubtedly this object has been achieved under section 90(1) of the Act under which any candidate can come in and be joined as respondent within fourteen days of the publication of the petition in the official gazette. But this section

requires a candidate to take some steps to be joined as a respondent within prescribed time while section 82 purports to give him the right unsought and unsolicited. This privilege implies special consideration to candidates who entered the arena of election at the first stage and ran the gauntlet of scrutiny successfully but eventually retired from the arena for reasons of their own. Though they did not go to the polls, the legislature seems to have thought that their status as duly nominated candidates should be recognised in the contest of election petitions which may lead to unthought of results or the transfer of seat from an elected candidate. They may join the conflict, if they so choose, after skulking in their tests but there is no element of compulsion. In this view of the matter, there is no absurdity involved in the legal requirement of their joinder as respondents in an election petition *Lex estdictamen* legis is the maxine which should normally be applicable. There is no reason to suppose that the aforesaid interpretation of section 82 proves an exception to this rule.

19. In fact section 82 of the Act has unified and rationalised the law prevailing before the Act about the impleading of respondents in election petitions. A petitioner has been saved the trouble of relating the joinder of parties to the reliefs claimed. This therefore provides that all duly nominated candidates should be joined as respondents, what was perhaps contemplated to be a simplification of the matter has led to controversies of vast magnitude about the definition of meaning of a 'duly nominated candidate'. I have had the advantage of reading a copy of the order in election petition No. 316 of 1952 before the Election Tribunal at Allahabad (Shri Saligram Jaiswal *vs.* Sheo Kumar Pandey & Others) in which it has been held that a candidate whose name does not appear in the list of valid nominations cannot be regarded as a duly nominated candidate. With utmost respect to this Tribunal I have not been able to accept this interpretation for the reasons already mentioned. One very much wishes that the expression 'duly nominated candidate' used in section 82 of the Act was so defined or explained by the legislature as to be beyond the range of controversy.

20. My finding therefore is that duly nominated candidates who have withdrawn their candidature under section 37 of the Act should be joined as respondents in an election petition. But the majority view of my learned colleagues will prevail under section 104 of the Act and would be regarded as the view of this Tribunal. In the circumstances I do not feel called upon to express an opinion whether this Tribunal is competent to order or permit the joinder of such candidates as respondents *suomoto* or on the request of the petitioners concerned.

21. The question of the effect of non-joinder of such respondents does not arise for the practical purposes of these petitions in view of the opinion of the majority on this matter. It may however be said to arise as a sequal to my finding on the issue of non-joinder. But I feel it would be needless to express a definite opinion on this question at this stage of the proceedings. The question of power or jurisdiction of Tribunals to permit amendments in election petitions is likely to arise in some of these cases in future and it may be embrassing to all concerned including myself, if I arrive at or express conclusions on this subject. Suffice it to say that in spite of the apparently mandatory language of section 82 the Act has not provided for the summary dismissal of election petitions on the ground of non-joinder of parties, as it has been provided for dismissal for non-compliance with the provisions of section 81, section 83 or section 117 of the Act.

22. The exclusion of non-compliance with the requirement of joinder or parties construed in section 82 from the category of disobedience of other mandatory provisions referred to above meriting the dismissal of petitions, is significant. This exclusion seems to be based on sound reasons. On the other hand the inclusion of non-joinder of parties in this sternly imperative category would have wiped out the distinction between necessary party and proper party and would have imposed a uniform penalty regardless of the matter and consequence of non-compliance. In statutes some times an apparently mandatory provision is regarded as really directory.

The 26th November 1952.

(Sd.) G. L. SRIVASTAVA, *Member*,

Election Tribunal, Rewa, V.P.

FINDINGS OF THE TRIBUNAL

The unanimous view of the Tribunal is that the non-joinder of candidates whose nominations had been rejected at the time of scrutiny and of those who withdrew their candidature is not fatal to the maintenance of these petitions.

The view of tone of the members of this Tribunal (Shri G. L. Shrivastava) as recorded above however is that a candidate whose nomination papers had been accepted at the time of scrutiny and who withdrew under section 37 of the Representation of the People Act, should have been joined as respondents to these petitions.

(Sd.) E. MUKARJI, *Chairman.*
(Sd.) G. L. SHRIVASTAVA, *Member.*
(Sd.) U S. PRASAD, *Member.*

The 26th January, 1953.

[No. 19/307/52-Elec.III/8516.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

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